Supreme Court, U. S.
FILED
DEC 19 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-5903

McARTHUR CORBITT,

Appellant,

-v-

STATE OF NEW JERSEY,

Appellee.

On Appeal from the Supreme Court of New Jersey

JURISDICTIONAL STATEMENT

STANLEY C. VAN NESS
Public Defender

JAMES K. SMITH, JR.
Assistant Deputy Public Defender
576 Central Avenue
East Orange, New Jersey 07018

Attorneys for Appellant

SUBJECT INDEX

	Page
Jurisdictional statement	1
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Statutes Involved	3
Statement	3
The Questions Are Substantial	5
The Fifth And Sixth Amendment Rights To A Jury Trial	5
The Equal Protection Clause	12
Conclusion	16

APPENDIX

Appendix A - Unpublished opinion of the Superior Court of New Jersey, Appellate Division	A-1 to A-5
Appendix B - Order of the Supreme Court of New Jersey dated February 18, 1976 granting certification	B-1
Appendix C - Opinion of the Supreme Court of New Jersey entered on October 6, 1977	C-1 to C-42
Appendix D - Notice of Appeal to the Supreme Court of the United States filed on November 30, 1977	D-1

TABLE OF AUTHORITIES CITED

Cases

Blackledge v. Perry, 417 U.S. 21 (1974)	8
Brady v. United States, 397 U.S. 742 (1970)	11
Chaffin v. Stynchcombe, 412 U.S. 17 (1973)	11
Cohen v. California, 403 U.S. 15 (1971)	3
Dandridge v. Williams, 397 U.S. 471 (1970)	12
Dunn v. Blumstein, 405 U.S. 330 (1972)	8, 12
Funicello v. New Jersey, 403 U.S. 948 (1971)	5, 6, 10
Furman v. Georgia, 408 U.S. 238 (1972)	8
Garrity v. New Jersey, 385 U.S. 511 (1967)	8
Griffin v. California, 380 U.S. 609 (1965)	8
Griffin v. Illinois, 351 U.S. 12 (1956)	14, 15
Hess v. United States, 496 F.2d 936 (8 Cir. 1974)	8
Ludwig v. Massachusetts, 427 U.S. 618 (1976)	9
McGautha v. California, 402 U.S. 183 (1971)	11
McGinnis v. Royster, 410 U.S. 263 (1973)	12
McMann v. Richardson, 397 U.S. 759 (1968)	11
Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974)	13
Middendorf v. Henry, 425 U.S. 25 (1976)	9
Nadeau v. Helgemore, 423 F. Supp. 1250 (D.N.H. 1976)	13
North Carolina v. Pearce, 395 U.S. 711 (1969)	8, 14
People v. Young, 20 Ill. App. 3d 891, 314 N.E. 2d 280 (1974)	8
Pruett v. Texas, 468 F.2d 51 (5 Cir. 1972), aff'd en banc 470 F.2d 1182 (5 Cir. 1973), aff'd mem. sub nom Texas v. Pruett, 414 U.S. 802 (1973)	13, 14
Robinson v. Beto, 426 F.2d 797 (5 Cir. 1970)	14
San Antonio Independent School District v. Rodriquez, 411 U.S. 1 (1973)	12

Shapiro v. Thompson, 394 U.S. 618 (1969)..... 13

State v. Corbitt, 74 N.J. 379, 378 A.2d 235 (1977)..... 6, 9

State v. Forcella, 52 N.J. 263, 245 A.2d 181 (1968)..... 10

State v. Funicello, 60 N.J. 60, 286 A.2d 55 (1972), cert. den. sub nom New Jersey v. Presha, 408 U.S. 942 (1972)..... 6

State v. Greely, 11 N.J. 485, 95 A.2d 1 (1953)..... 12

State v. Hubbard, 123 N.J. Super. 345, 303 A.2d 87 (App. Div. 1973), certif. den. 63 N.J. 325, 315 A.2d 413 (1973)..... 7

State v. Thomas, 61 N.J. 314, 294 A.2d 57 (1972)..... 15

State v. Walker, 33 N.J. 580, 166 A.2d 567 (1960)..... 7

State v. Williams, 39 N.J. 471, 189 A.2d 193 (1963)..... 6

United States v. Derrick, 519 U.S. 1 (6 Cir. 1975)..... 8

United States v. Jackson, 390 U.S. 570 (1970)..... 5, 6, 8, 9

United States v. McCoy, 429 F.2d 739 (D.C. Cir. 1970)..... 8, 11

United States v. Stockwell, 472 F.2d 1186 (9 Cir. 1973)..... 8

STATUTES

28 U.S.C. § 1257(2)..... 3

N.J.S.A. 2A: 113-1 et. seq..... 6, 7, 12

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO._____

MCARTHUR CORBITT,

Appellant,

-v-

STATE OF NEW JERSEY,

Appellee.

On Appeal from the Supreme Court of New Jersey

JURISDICTIONAL STATEMENT

Appellant, McArthur Corbitt, appeals from the judgment of the Supreme Court of New Jersey entered on October 6, 1977 which affirmed his conviction for first-degree murder and the mandatory life sentence imposed thereon. This jurisdictional statement is submitted to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are present.

OPINIONS BELOW

The opinion of the Superior Court of New Jersey, Appellate Division, entered on September 23, 1975 is unpublished. A copy of that opinion is attached hereto as Appendix A.

The opinion of the Supreme Court of New Jersey is reported at 74 N.J. 379, 378 A.2d 235 (1977). A copy of that opinion is included as Appendix C.

JURISDICTION

Appellant Corbitt was convicted of felony murder in the Superior Court of New Jersey, Law Division, Essex County and was sentenced to life imprisonment. At his sentencing and on appeal, appellant contended that this mandatory life sentence imposed upon a conviction for first degree murder unconstitutionally penalized his Fifth and Sixth Amendment right to a jury trial, since a defendant who pled to the offense could receive a sentence for a term of years. This contention was held to be without merit by the Appellate Division of the Superior Court, which affirmed appellant's conviction.

Subsequently, the Supreme Court of New Jersey granted certification "limited to the question of the validity of the mandatory life sentence for murder." A copy of that order is attached as Appendix B. Before the Supreme Court of New Jersey, appellant contended not only that the murder statute penalized his right to a jury trial, but also that the sentencing scheme violated the Equal Protection Clause. However, that Court held the murder statute to be constitutional and thus affirmed appellant's conviction. 74 N.J. 379, 378 A. 2d 235 (1977). A Notice of Appeal was filed with the Supreme Court of New Jersey on November 30, 1977. A copy of that notice is included as Appendix D.

Jurisdiction to review the decision of the Supreme Court of New Jersey is conferred by Title 28, United States Code, § 1257(2). Cohen v. California, 403 U.S. 15, 18 (1971).

QUESTIONS PRESENTED

1. Whether the New Jersey murder statute, which imposes a mandatory life sentence on defendants convicted of felony murder after a jury trial, but which allows defendants who do not contest their guilt to be sentenced to a term of years, served to penalize the exercise of the appellant's Fifth and Sixth Amendment rights to a jury trial.

2. Whether, consistent with the Equal Protection Clause, a state may enact a statute which provides separate scales of punishment for those persons who plead to an offense as opposed to those persons who are convicted after a jury trial.

STATUTES INVOLVED

This appeal involves New Jersey Statutes Annotated 2A:113-1,2,3, and 4, which are set forth at length in Appendix E.

STATEMENT

Appellant was convicted of arson and murder in the Superior Court of New Jersey, Law Division, Essex County. All of the evidence pointed to a felony murder. Allegedly, after having a series of disagreements with his landlord

concerning rent payments, appellant set fire to his apartment building to gain revenge. In the course of that fire, a visitor to a second floor apartment died of smoke inhalation.

At the sentencing on May 16, 1973, defense counsel noted that if appellant had pleaded to the murder charge he would have been eligible to be sentenced to a term of not more than thirty years in prison. However, because he had been convicted of this offense after a jury trial, appellant was subject to the mandatory life sentence imposed for first degree or felony murder. Thus counsel argued that the murder statute was unconstitutional and that the judge should exercise the same powers that he would have had in the event that appellant had chosen not to contest the charges. However, the Court ruled that he was powerless to impose any sentence except life imprisonment.

In an opinion dated September 23, 1975, the Appellate Division of the Superior Court of New Jersey rejected appellant's contention that the penalty provision of the murder statute was unconstitutional and affirmed his conviction. However, because the case clearly involved a felony murder, the Appellate Division merged the arson conviction into the murder charge.

Appellant then petitioned the Supreme Court of New Jersey to review his case. In an order dated February 18, 1976 the Court agreed to hear the case but limited its review to "the question of the validity of the mandatory life sentence upon a jury conviction for murder."

On October 6, 1977 the New Jersey Supreme Court held by a five to two majority that the statute was constitutional. Specifically, the majority held that: (1) the holding of United States v. Jackson did not extend to cases where there was no threat of the death penalty; (2) even if Jackson was applicable, the New Jersey murder statute did not "needlessly" encourage guilty pleas; and (3) the statute did not violate the Equal Protection Clause because there was a rational basis for imposing separate penalty schedules. The two dissenting justices, in separate opinions, both found the mandatory life sentence to be needless and coercive.

THE QUESTIONS ARE SUBSTANTIAL

A. The Fifth And Sixth Amendment Rights To A Jury Trial

In United States v. Jackson, 390 U.S. 570, 581 (1970), this Court struck down the death penalty provisions of the federal kidnapping statute because it needlessly encouraged guilty pleas, while penalizing those defendants who exercised their Fifth and Sixth Amendment rights to a jury trial. The appellant would submit that the New Jersey murder statute, as its predecessor which was struck down in Funicello v. New Jersey, 403 U.S. 948 (1971), is clearly unconstitutional because it imposes a penalty upon those defendants who insist upon a jury trial.

Under the former penalty provisions of the statute, a defendant who was convicted of first-degree murder after a jury trial would receive the death penalty unless the jury recommended otherwise, while the defendant who pled

to the offense could receive no more than life imprisonment. However, in Funicello v. New Jersey, supra, this Court, in a memorandum opinion, held that statutory scheme unconstitutional on the basis of United States v. Jackson and other cases. Thereafter, in State v. Funicello, 60 N.J. 60, 286 A2d 55 (1972), cert. den. sub. nom. New Jersey v. Presha, 408 U.S. 942 (1972), the Supreme Court of New Jersey acted to preserve the remainder of the statute by excising the death penalty provision.

Thus, at the present time the penalty for first-degree murder is life imprisonment, while the punishment for second degree murder is not more than 30 years in the State Prison. N.J.S.A. 2A:113-4. However, in New Jersey an accused is not indicted for either first or second degree murder, but rather for the crime of "murder," which encompasses both degrees. State v. Williams, 39 N.J. 471, 479, 189 A2d 193, 197 (1963). Not until the jury renders its verdict does it designate the crime as being either first or second degree murder. N.J.S.A. 2A:113-2. Felony murder and premeditated murder are both considered murder in the first degree. N.J.S.A. 2A:113-2. Thus a defendant who goes to trial in a felony murder case and is convicted must receive the mandatory sentence of life imprisonment. N.J.S.A. 2A:113-4, State v. Corbitt, 74 N.J. 379, 378 A2d 235 (1977).

However, a defendant accused of felony murder may avoid this mandatory life sentence if he is willing to

plead to the offense. N.J.S.A. 2A:113-3 provides in pertinent part:

> In no case shall the plea of guilty be received upon any indictment for murder...
>
> Nothing herein contained shall prevent the accused from pleading non vult or nolo contendere to the indictment; the sentence to be imposed, if such plea shall be accepted, shall be either imprisonment for life or the same as that imposed upon a conviction of murder in the second degree.

In sentencing a defendant who has pled non vult to the crime of murder, a judge is not to make a determination as to the degree of the crime, but rather he has complete discretion to impose a term of not more than 30 years, the punishment for second degree murder, or life imprisonment, the penalty for first degree murder. State v. Walker, 33 N.J. 580, 588, 166 A.2d 184, 185-86 (1957). Thus it is common for a defendant entering a non vult plea to set forth facts which would clearly indicate a first degree murder, but yet be sentenced to a term of years. See e.g. State v. Hubbard, 123 N.J. Super. 345, 351-52, 303 A.2d 87, 90 (App. Div. 1973), certif. den. 63 N.J. 325, 315 A.2d 413 (1973). On the other hand, if that defendant refuses to enter a plea but goes forward to trial and is convicted on the same facts, then he must receive a life sentence. Therefore, even though the maximum sentence for murder is life imprisonment whether or not there had been a trial, the statute nevertheless penalizes the defendant who goes to trial by requiring that after conviction he must be sentenced by a judge who has no discretion to impose a sentence of less than life imprisonment. This statutorily-

imposed loss of discretion in the sentencing judge, which may mean the difference between a few years in the State Prison and life imprisonment, is a severe penalty for a defendant to pay simply because he has chosen to exercise his constitutional rights.

The fact that the death penalty is no longer involved does not make such a sentencing scheme proper. Although the severity of the death penalty may require special concern for the rights of the condemned, Furman v. Georgia, 408 U.S. 238, 286-87 (1972), (opinion of Douglas, J.), the appellant does not understand the Jackson decision to extend only to death penalty cases. Rather, United States v. Jackson is merely one of a long line of cases in which this Court has held that neither courts nor legislatures may impose premiums on the exercise of constitutional rights. Griffin v. California, 380 U.S. 609 (1965); Garrity v. New Jersey, 385 U.S. 511 (1967); Dunn v. Blumstein, 405 U.S. 330 (1972). Indeed, there have been numerous cases not involving the death penalty in which the courts have recognized that a defendant may not be penalized merely because he insisted upon his right to trial. See e.g. United States v. McCoy, 429 F.2d 739, 743 (D.C. Cir. 1970); United States v. Derrick, 519 U.S. 1 (6 Cir. 1975); Hess v. United States, 496 F.2d 936, 938 (8 Cir. 1974); United States v. Stockwell, 472 F.2d 1186 (9 Cir. 1973); People v. Young, 20 Ill App. 3d 891, 314 N.E.2d 280 (1974). Similarly, in Blackledge v. Perry, 417 U.S. 21, 25 n.4 (1974), this Court held that where a state enacts statutes which open avenues of access to the courts, it is a violation of the Due Process Clause for the state to then vindictively punish those defendants who exercise their rights under the statute. See also North Carolina v. Pearce, 395 U.S. 711, 724 (1969).

Although in Ludwig v. Massachusetts, 427 U.S. 618 (1976), this Court did allow a "two tier" system by which a defendant accused of certain crimes could receive a more severe sentence after a trial de novo, the majority opinion written by Mr. Justice Blackmun was careful to distinguish Jackson by pointing out that under the Massachsetts system "the same range of penalties is available at both tiers." Id. at 627, n.4. In another recent decision, Middendorf v. Henry, 425 U.S. 25 (1976), this Court noted that, while it is permissible under the Uniform Code of Military Justice for a person to be subject to more severe penalties because he has requested counsel and a formal court martial, in a civilian context this same scheme would call into play the reasoning of United States v. Jackson that one cannot be penalized for exercising a constitutional right. Id. at 48, n.25. Thus it is clear that the basic rationale of the Jackson decision extends well beyond those cases in which there is a possibility of the death penalty.

The question that remains is whether there is a need for this type of statute or whether it is an unnecessary burden on the exercise of the appellant's constitutional rights. In its opinion below the Supreme Court of New Jersey found a need for the murder statute in that it encouraged guilty pleas and thus provided substantial benefits for both the State and the defendant. State v. Corbitt, supra, 74 N.J. at 396, 378 A.2d at 244. Among the benefits to the defendant is the opportunity to receive a lesser sentence, while the State may obtain a quick determination of guilt without going through the time and expense of a jury trial. 74 N.J. at 394, 378 A.2d at 242. Yet, while encouragement

of guilty pleas may be a valid government objective, discouragement of jury trials is not.

In United States v. Jackson the Government had contended that the sentencing provision of the kidnapping statute was justified because it served to mitigate the severity of the death penalty. 390 U.S. at 582. However, as this Court noted:

> Whatever might be said of Congress' objectives, they cannot be pursued by means that needlessly chill the exercise of basic constitutional rights... The question is not whether the chilling effect is "incidental" rather than intentional; the question is whether that effect is unnecessary and therefore excessive.
>
> * * *
>
> The goal of limiting the death penalty to cases in which a jury recommends it is an entirely legitimate one. But that goal can be achieved without penalizing those defendants who plead not guilty and demand jury trial. Id. [citations omitted]

Thus, since there was no need for the death penalty provision in the Federal Kidnapping Act, it was struck from the remainder of the statute. It should be noted that in State v. Forcella, 52 N.J. 263, 280, 245 A.2d 181, 190 (1968) the Supreme Court of New Jersey had relied upon this mitigation of punishment argument in an attempt to save its death penalty provision, but that statute was nevertheless struck down in Funicello v. New Jersey, supra. In the present case the fact that the New Jersey murder statute may encourage guilty pleas and save judicial resources can no more justify the statute than did the mitigation of punishment argument. Regardless of its objectives, the

fact remains that the sentencing scheme of N.J.S.A. 2A: 113-1 to 4 is unnecessary and therefore a burden on the right to a jury trial. There is simply no need to give a convicted defendant the maximum sentence solely because he has chosen to go to trial.

Admittedly, the criminal justice system is replete with the making of difficult judgments and the Constitution is not violated merely because a defendant has to choose between two alternatives. Chaffin v. Stynchcombe, 412 U.S. 17, 30 (1973); McGautha v. California, 402 U.S. 183, 203 (1971); McMann v. Richardson, 397 U.S. 759, 769 (1968). Moreover, there is a degree of inherent coercion present in the decision whether to stand trial because it is common for leniency to be extended to persons who plead guilty. Brady v. United States, 397 U.S. 742, 761 (1970). But normally a defendant who goes to trial pays no penalty for exercising his rights since, if convicted, he still may receive any sentence allowed by the statute. However, under the New Jersey murder statute, a defendant who stands trial in a felony murder case knows that, if convicted, he must receive the maximum penalty, life imprisonment. This is not the sort of coercion inherent in the criminal justice system; it is a vindictive penalty imposed only on those who have exercised their constitutional rights. The effect of this statute is equivalent to the pronouncements of a judge who indicates that he will impose the maximum punishment on any defendant convicted before him at a jury trial. United States v. McCoy, supra, 429 F.2d at 742-43. Accordingly, the appellant would submit that the New Jersey

murder statute, N.J.S.A. 2A:113-1 to 4, places an unnecessary burden on the right to a jury trial and is therefore in violation of the Fifth and Sixth Amendments.

B. The Equal Protection Clause

As noted, the New Jersey murder statute has two scales of punishment for the same offense. If a defendant pleads non vult and admits a felony murder, he may be sentenced to not more than 30 years in prison or to life imprisonment. But if that person is convicted of felony murder after a trial, he receives the mandatory sentence of life imprisonment.* It is submitted that this scheme of different punishments for the same offense, based solely on whether the defendant has gone to trial, violates the Equal Protection Clause of the Fourteenth Amendment.

The Equal Protection Clause does not prevent a state from classifying persons into separate groups, it merely requires that such classifications be reasonably related to a permissible state purpose. San Antonio Independent School District v. Rodriquez, 411 U.S. 1, 17 (1973); McGinnis v. Royster, 410 U.S. 263, 270 (1973); Dandridge v. Williams,

---

* The State had argued below that there was a difference between a conviction for "murder" and a conviction for felony murder. 74 N.J. at 400, 378 A.2d at 246. The Supreme Court of New Jersey did not find this to be "a fully satisfactory basis for meeting the defendant's argument," and thus chose to address the question more directly. 74 N.J. at 401, 378 A.2d at 246. In any event, this distinction would not matter in the present case. Although N.J.S.A. 2A:113-2 requires a jury returning a guilty verdict to "designate by their verdict whether it be murder in the first degree or in the second degree," State v. Greely, 11 N.J. 485, 489-91, 95 A.2d 1, 3-4 (1953), the jury in the present case simply found appellant guilty of "murder." Of course, since the case was tried on a felony murder basis, the conviction was deemed to be one of first-degree murder.

397 U.S. 471, 487 (1970). In the present case the Supreme Court of New Jersey held that the murder statute did not violate the Equal Protection Clause because it was rationally related to legitimate state goals such as "ameliorating the rigor of life imprisonment for those... willing to acknowledge their crime" and "the facilitation of plea negotiations in homicide cases." 74 N.J. at 402, 378 A.2d at 246-247. But the "rational relationship" test is inappropriate in cases such as the present involving infringements on fundamental rights. Rather, where the nature of the challenged classification serves to impose a penalty on the exercise of a constitutional right, the Equal Protection Clause demands that there be a "compelling state interest" to justify that classification. Memorial Hospital v. Maricopa County, 415 U.S. 250, 256-58 (1974); Dunn v. Blumstein, supra, 405 U.S. at 337-39; Shapiro v. Thompson, 394 U.S. 618, 634 (1969). This "compelling interest" test is applicable even where a classification has not been shown to deter the exercise of the constitutional right, but merely serves to penalize it. Dunn v. Blumstein, supra, 405 U.S. at 339-40; Shapiro v. Thompson, supra, 394 U.S. at 634. Moreover, even if the state does have a compelling interest, it still must demonstrate that it has used the least restrictive alternative to achieve its goal. Dunn v. Blumstein, supra, 405 U.S. at 342-43.

In addition to the Fifth and Sixth Amendment right to a jury trial, the appellant would submit that the right of access to the courts is also a fundamental right requiring the invocation of the "compelling state interest" standard. See Nadeau v. Helgemore, 423 F. Supp. 1250, 1265 (D.N.H. 1976). In Pruett v. Texas, 468 F.2d 51 (5 Cir. 1972), aff'd en banc 470 F.2d 1182 (5 Cir. 1973), aff'd mem. sub nom.

Texas v. Pruett, 414 U.S. 802 (1973), a defendant challenged a Texas statute which operated to deny "good time" credit for those prisoners who had chosen to appeal their convictions. The Fifth Circuit held, and this Court agreed, that the Equal Protection Clause did not allow the State of Texas to impose such a premium upon a defendant's right to appeal. 486 F.2d at 56. Since that state had provided a process by which defendants could appeal their convictions, it was required to keep that process free of "unreasoned distinction" which could only impede open and equal access to the courts." Id. See also North Carolina v. Pearce, supra at 724; Griffin v. Illinois, 351 U.S. 12, 18 (1956). Because the denial of good time credits served to penalize a prisoner's right to appeal, the statute was held to be in violation of the Fourteenth Amendment. See also Robinson v. Beto, 426 F.2d 797 (5 Cir. 1970).

Certainly, none of the reasons advanced to justify the New Jersey murder statute would qualify as a "compelling state interest." While it is commendable that the statute serves to "ameliorat[e] the rigor of life imprisonment for those offenders who are willing to acknowledge their crime." 74 N.J. at 402, 378 A.2d at 246, the State has no compelling interest in not extending the same sentencing alternatives to persons convicted at trial. Although the statute may serve to facilitate plea negotiations in murder cases by discouraging trials, such a disparate sentencing scheme is not necessary to preserve plea bargaining. Rather, despite the fact that the murder statute is the only New Jersey law which provides separate scales of punishment for

defendants convicted at trial, plea bargaining is an accepted and widespread practice in the state. See e.g. State v. Thomas, 61 N.J. 314, 321, 294 A.2d 61 (1972). The fact that elimination of jury trials conserves scarce judicial resources is irrelevant, since expense has never been recognized as a justification for limiting constitutional protections. Griffin v. Illinois, supra, 351 U.S. at 17-19. Thus, there being no compelling state interest, the discriminatory classification of those defendants who have exercised their right to a jury trial violates the Equal Protection Clause.

CONCLUSION

It is submitted that the Supreme Court of New Jersey erred in sustaining the validity of the state murder statute because that law clearly penalizes the right to a jury trial in violation of the Fifth, Sixth, and Fourteenth Amendments. The appellant would further submit that the questions presented by this appeal are not only substantial but are of great public importance warranting plenary consideration by this Court.

Respectfully submitted,

STANLEY C. VAN NESS
Public Defender
Attorney for Appellant
576 Central Avenue
East Orange, New Jersey 07018

BY: James K. Smith, Jr.
JAMES K. SMITH, JR.
Assistant Deputy
Public Defender

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3457-72

STATE OF NEW JERSEY,

Plaintiff-Respondent,

-v-

McARTHUR CORBITT,

Defendant-Appellant.

Argued September 8, 1975 - - Decided SEP 23 1975

Before Judges Carton, Crahay and Handler.

On appeal from Essex County Court.

Mr. Carl Gottschall, designated counsel, argued the cause for appellant (Mr. Stanley C. Van Ness, Public Defender, attorney).

Mrs. Sara A. Friedman, Assistant Prosecutor, argued the cause for respondent (Mr. Joseph P. Lordi, Essex County Prosecutor, attorney).

PER CURIAM

An indictment accused defendant of two counts of arson - N.J.S.A. 2A:89-1. A third count charged him with the felony murder of Earl Redding.

The arsons allegedly occurred on May 11 and May 13,1972 on premises known as 11 Bedford Street, Newark, a multifamily apartment dwelling. Redding, a visitor in an apartment on the involved premises, died of smoke inhalation as a result of the May 13th fire.

Tried to a jury defendant was found guilty of starting the May 13th fire and Redding's murder. He was acquitted of

Appendix A
A-1

APPENDIX A

A-1

the May 11th episode. Sentences of life imprisonment on the murder conviction and a concurrent five to seven year term for the arson were imposed.

It is not necessary to detail the facts. It is enough to note that the principal inculpating evidence against the defendant was his signed confession. The purported motivation for the burnings was revenge against defendant's landlord. Defendant contended that the confession although signed was neither voluntary nor truthful, being the product of threats and force.

In his brief on this appeal defendant asserts -

"Point I — The Court's refusal to allow defense counsel to inquire into and present to the jury all the same circumstances attending the confession as were available when it (the Court) made its initial determination on its (the confession's) admissibility was denial of due process and prevented a fair trial.

Point II — Since the confession was not proven voluntary beyond a reasonable doubt at the preliminary hearing, the court should not have allowed the confession * * * to go in evidence.

Point III — The defendant's Sixth Amendment rights were violated. The due process requirement of fundamental fairness was violated as well.

Point IV — There were further violations of defendant's Sixth Amendment rights.

Point V — The Court's refusal to charge Clawans as to Chief Joseph L. Starrs, coupled with the prosecutor's comments on summation, warrant reversal.

Point VI — Since defendant's conviction of the May 13th arson merged with his conviction of the May 13th felony-murder, the arson conviction and sentence should be vacated.

A 2

Point VII — Since the defendant could have pleaded non-vult under N.J.S. 2A:113-3 and thus received less than a life sentence, his mandatory life sentence under N.J.S. 2A:113-4 should be set aside and he should be sentenced under N.J.S. 2A:113-3."

As to Point I, while we perceive error, we are satisfied, and beyond reasonable doubt, that it was not of a quality warranting reversal.

Following a voir dire hearing on whether defendant was given his rights as mandated by Miranda v. Arizona, 384 U.S. 436 (1966), the court below found that they had been and that defendant's confession was voluntary. During the hearing defendant testified that he had not been given the required warnings and that the police threatened him with a pistol and hit him with a book or books. He claimed that while he signed the statement he had not read it.

In its ruling the trial court included -

> "As far as the interrogation with respect to the statements, I hold that it is no longer an issue as to whether Miranda applies or is voluntary and I will restrict that phase of the questioning particularly on cross-examination."

Defense counsel thereafter queried the court on the restriction of cross-examination of the circumstances attendant the taking of the confession.

The court responded -

> "Just as to the voluntariness. I have ruled on Miranda. I will permit you to go into the circumstances as to the truthfulness, but not whether he was given his Miranda rights since that is no longer an issue."

The issue here presented was thoroughly aired and decided in State v. Hampton, 61 N.J. 250 (1972) -

A 3

> "[W]e hold for the future that the trial court alone shall determine (1) whether the Miranda warnings were given to the accused and his rights thereunder waived by him before the confession was given; and that if it finds the warnings were not given, or if given the rights not waived, the confession must be excluded, and (2) if those conditions were satisfied, whether in light of all the circumstances attending the confession it was given voluntarily. If these questions are resolved in favor of the State, then, without being advised of the court's decision, the jury shall be instructed that they should decide whether in view of all the same circumstances the defendant's confession is true. If they find that it is not true, then they must treat it as inadmissible and disregard it for purposes of discharging their function as fact finders on the ultimate issue of guilt or innocence." (emphasis added) [at 272]

Ordinarily then, as here, the giving of the Miranda warnings are part of the "same circumstances" a jury should have in passing upon "truthfulness" which the trial court employed in the determination of "voluntariness". It was error to foreclose this proof, but as noted earlier, not of a kind to set aside the conviction.

First, all of the circumstances surrounding the taking of statements, save Miranda, were articulated to the jury. (Defendant here made two statements, the first exculpatory.) Defendant's principal contention in our view was not a lack of Miranda warnings but rather that the damaging statement was coerced and that he had signed it under duress without being aware of its ultimate contents. The jury obviously rejected this stand. In this context then we perceive no reversible error whatever in delimiting testimony as to the giving of the warnings. In sum then, we are satisfied that the court correctly found that the

A4

incriminating statement was voluntarily given and that its error on the issue of truthfulness was not so harmful as to deprive defendant of a fair jury finding on the latter score. That ultimate jury determination, in our view, was validly grounded in the record.

As to defendant's Point VI, the State concedes, and we agree that - " * * * counts two (arson) and three (murder) should have been merged by the court when the judgment of conviction was entered." State v. Hubbard, 123 N.J. Super. 345 (App. Div. 1973). Accordingly, the conviction and consequent sentence for arson under Count II of Indictment No. 4554-71 are vacated.

Our review of the record satisfies us that as to defendant's Points II, III, IV, V and VII, set forth above, they are clearly without merit and warrant no discussion. R. 2:11-3(e)(2).

Accordingly, the judgment as modified herein, is affirmed.

A TRUE COPY.

Elizabeth M. Langhlin

Clerk

A-5

SUPREME COURT OF NEW JERSEY
C-250 SEPTEMBER TERM 1975

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

McARTHUR CORBITT,

Defendant-Petitioner

ON PETITION FOR CERTIFICATION

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon ORDERED that the petition for certification is granted and it is further;

ORDERED that the certification is limited to the question of the validity of the mandatory life sentence upon a jury conviction for murder and it is further;

ORDERED that the parties file and serve briefs as to that question in accordance with the following schedule; appellant is to serve and file his brief within 21 days of the date hereof and respondent is to serve and file its brief within 21 days thereafter.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 18th day of February, 1976.

Florence R. Peskoe
Clerk

A TRUE COPY

Florence R. Peskoe

CLERK

B-1

APPENDIX B

B-1

APPENDIX C

Opinion in State v. Corbitt has not been filmed.

It can be found at 74 N.J. 379, 378 A. 2d 235 (1977).

SUPREME COURT OF NEW JERSEY
DOCKET NO. A-98-76

MC ARTHUR CORBITT, :

Appellant, :

-v- :

STATE OF NEW JERSEY, :

Appellee. :

ORIGINAL
FILED
NOV 30 1977
Stephen W. Townsend
ACTING CLERK

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that McArthur Corbitt, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of New Jersey, affirming the judgment of conviction, entered herein on October 6, 1977.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STANLEY C. VAN NESS
Public Defender
Attorney for Appellant
576 Central Avenue
East Orange, New Jersey 07018
201-673-7500

BY James K. Smith, Jr.
JAMES K. SMITH, JR.
Assistant Deputy Public Defender